United States Department of Labor
Employees' Compensation Appeals Board

B.H., Appellant	)	
and	)	**Docket No. 09-826**
	)	**Issued: October 19, 2009**
FEDERAL JUDICIARY, COURT SERVICES & OFFENDER SUPERVISION AGENCY, PRETRIAL SERVICES AGENCY, Washington, DC, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On February 5, 2009 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated November 12, 2008. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established an eye injury on April 14, 2008, as alleged.

FACTUAL HISTORY

On April 21, 2008 appellant, then a 41-year-old case manager, filed a traumatic injury claim (Form CA-1) alleging that she sustained a left eye injury in the performance of duty on April 14, 2008. On April 14, 2008 at 3:00 p.m. she was lifting some paper with her hand and it struck her left eye, resulting in a corneal abrasion. Appellant's supervisor checked a box "yes" that her knowledge of the facts agreed with appellant's statements. The supervisor also indicated that appellant returned to work on April 17, 2008.

Appellant submitted "discharge instructions" from a health center dated April 14, 2008 regarding a corneal abrasion and use of an eye antibiotic. A work release form signed by a nurse indicated that appellant could return to work on April 17, 2008.[1] By letter dated October 7, 2008, the Office requested that appellant submit additional probative medical evidence on causal relationship between her condition and the reported work incident. Appellant submitted medical evidence regarding a right knee injury.[2]

By decision dated November 12, 2008, the Office denied the claim for compensation. It stated that the evidence was insufficient to establish that the events occurred as alleged, and the medical evidence did not provide a diagnosis that could be connected to the claimed events.

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides for the payment of compensation for "the disability or death of an employee resulting from personal injury sustained while in the performance of duty."[3] The phrase "sustained while in the performance of duty" in the Act is regarded as the equivalent of the commonly found requisite in workers' compensation law of "arising out of and in the course of employment."[4] An employee seeking benefits under the Act has the burden of establishing that he or she sustained an injury while in the performance of duty.[5] In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether "fact of injury" has been established. Generally "fact of injury" consists of two components, which must be considered, in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred. The second component is whether the employment incident caused a personal injury, and generally this can be established only by medical evidence.[6]

The Office's procedures recognize that a claim may be accepted without a medical report when the condition is a minor one, which can be identified on visual inspection, the injury was witnessed or reported promptly and no time was lost from work.[7] In clear-cut traumatic injury claims, such as a fall resulting in a broken arm, a physician's affirmative statement is sufficient

[1] The form contains another possible signature, but it is not clear whether this is the signature of a physician.

[2] Appellant indicated on appeal that she has another claim for a knee injury in May 2008. That claim is not before the Board on this appeal.

[3] 5 U.S.C. § 8102(a).

[4] *Valerie C. Boward*, 50 ECAB 126 (1998).

[5] *Melinda C. Epperly*, 45 ECAB 196, 198 (1993); *see also* 20 C.F.R. § 10.115.

[6] *See John J. Carlone*, 41 ECAB 354, 357 (1989).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3(d) (June 1995).

and no rationalized opinion on causal relationship is needed. In all other traumatic injury claims, a rationalized medical opinion supporting causal relationship is required.[8]

Rationalized medical opinion evidence is medical evidence that includes a physician's rationalized opinion on the issue of whether there is a causal relationship between a diagnosed condition and the identified employment factor. The opinion of the physician must be based on a complete factual and medical background, must be of reasonable medical certainty and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of the analysis manifested and the medical rationale expressed in support of the physician's opinion.[9]

ANALYSIS

The first component of "fact of injury" is whether the employment incident occurred as alleged. The Office stated that the evidence was insufficient to establish the event occurred as a alleged, without further explanation. Appellant stated that at 3:00 p.m. on April 14, 2008 she had paper in her hand and while lifting her hand, struck her left eye. It is well established that an employee's statement alleging that an injury occurred at a given time and in a given manner is of great probative value and will stand unless refuted by strong or persuasive evidence.[10] In this case, there is no persuasive contrary evidence. The employing establishment supervisor did not dispute that the incident occurred as alleged. In the absence of any evidence refuting appellant's statement, the Board finds that the April 14, 2008 incident occurred, as alleged

However, appellant did not submit any probative medical evidence on the issue of causal relationship between a diagnosed condition and the April 14, 2008 employment incident. The discharge instructions and work release form are of no probative value, as it cannot be ascertained they were prepared by a physician under the Act. A nurse is not a physician as defined under 5 U.S.C. § 8101(2)[11] and medical evidence lacking proper identification is of no probative medical value.[12] The Board notes that the medical evidence regarding appellant's knee condition did not address the eye condition, which is the subject of this appeal.

On appeal, appellant submitted additional evidence. The jurisdiction of the Board is limited to evidence that was before the Office at the time of its final decision and, therefore, the Board may only review evidence that was before the Office as of November 12, 2008.[13] Based

[8] *Id*.

[9] *Jennifer Atkerson*, 55 ECAB 317, 319 (2004).

[10] *Robert A. Gregory*, 40 ECAB 478, 483 (1989); *Thelma S. Buffington*, 34 ECAB 104, 109 (1982).

[11] *See Vincent Holmes*, 53 ECAB 468 (2002).

[12] *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

[13] 20 C.F.R. § 501.2(c).

on the evidence of record, appellant did not meet her burden of proof to establish an injury in the performance of duty on April 14, 2008.

CONCLUSION

The Board finds that the evidence supports an incident occurred as alleged on April 14, 2008. The medical evidence is not sufficient to establish an injury causally related to the employment incident.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated November 12, 2008 is modified to reflect an employment incident on April 14, 2008 and affirmed as modified.

Issued: October 19, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board